

Application No.: 10/538,223

Docket No.: 09600-00031-US

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MAR 23 2007

Applicant's representative, Liza D. Hohenschutz, would like to thank Examiners Christopher Tate and Melenie McCormick for the helpful and informative telephone interview on March 12, 2007. During the interview, prior art cited in previous Office Actions was discussed, as well as possible amendments that would distinguish the claimed invention over the art of record. The Examiners suggested amending the component b) in the compositions to recite specific NO donors rather than "NO donor" and/or "precursor of this NO donor." The Examiners also suggested removing arginine from the list of NO donors because some of the prior art cited against the claims mentions arginine. The Examiners also indicated that the phrase "wherein administration of the composition takes place less than twenty-four hours before a surgical procedure" should be added to claim 25.

In the present submission, claims 10 and 16 have been amended to recite specific NO donors and precursors by adding the list of NO donors and precursors in claims 11 and 17, respectively. Arginine was removed from the list of NO donors and does not appear in amended claims 10 and 16. Claims 11 and 17 have been canceled without prejudice. The phrase "wherein administration of the composition takes place less than twenty-four hours before a surgical procedure" was added to claim 25.

In the Office Action mailed October 23, 2006, claims 16-22 were rejected under 35 USC 103 as being unpatentable over Inanami et al. (Free Radic Res), Schneider et al. (U.S. Patent 5,656,608) and Jerkic et al. (Nephro Dial Trans) and further in view of Wu et al. (J. Nutr.).

None of the cited references, alone or in any combination, disclose or suggest the methods of amended claims 3-10, 21-23 and 25 of averting or reducing the risk of postoperative complications wherein a composition comprising a) green tea extract and b) at least one NO donor which is a substrate of NO synthetase, and/or one precursor of this NO donor, wherein the NO donor and precursor are selected from the group consisting of glutamine, precursors of glutamine, trinitroglycerin, isosorbite dinitrate, nitroprussite, aminoguanidine, spermine-NO, spermidine-NO and SIN 1 (3-morpholinomethylidene imines), or

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the physiologically tolerated salts or combinations thereof, is gastrointestinally administered to a surgical patient less than twenty-four hours before a surgical procedure.

Additionally, there is no disclosure or suggestion in any of the references, alone or in any combination, of the formulation of amended claims 16, 18-21 and 24 which comprises a composition comprising a) green tea extract and b) at least one NO donor which is a substrate of NO synthetase, and/or one precursor of this NO donor, wherein said NO donor and precursor are selected from the group consisting of glutamine, precursors of glutamine, trinitroglycerin, isosorbite dinitrate, nitroprussite, aminoguanidine, spermine-NO, spermidine-NO and SIN 1 (3-morpholinosydnone imines), or the physiologically tolerated salts or combinations thereof.

Claims 3-10, 16, and 18-25 are not obvious in view of Inanami et al., Schneider et al. and Jerkic et al. in view of Wu et al. (J. Nutr.). Withdrawal of this section 103 rejection is again respectfully requested.

In view of the above, the present application is believed to be in a condition ready for allowance. Reconsideration of the application is respectfully requested and an early Notice of Allowance is earnestly solicited.

The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 03-2775, under Order No. 09600-00031-US. A duplicate copy of this paper is enclosed.

Date: March 23, 2007

Respectfully submitted,

By Liza D. Hohenschutz
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